

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)
ex rel. MARY HENDOW and JULIE)
ALBERTSON) 2:03-cv-0457-GEB-DAD

Plaintiffs,)
)
v.) ORDER
)
UNIVERSITY OF PHOENIX,)
)
Defendant.)
)

On April 10, 2009, Relators Mary Hendow and Julie Anderson (collectively "Relators") filed a motion to seal "[p]ortions of [Defendant's] Memorandum of Points and Authorities in Support of [Defendant's] Motion to Dismiss for Lack of [Subject Matter] Jurisdiction [('Defendant's Memorandum')]."¹ The Relators have not submitted this document for in camera review as prescribed under L.R. 39-141; however, it seems the Relators intend for the court to conduct in camera review of an unredacted version of Defendant's Memorandum contained in courtesy copies submitted by Defendant. However, the Relators have not shown how this unredacted version of Defendant's

1 Memorandum differs from the version filed on the public docket. This
2 should have been made clear so that the Court could readily see what
3 the Relators desired to be sealed; for example, the Relators could
4 have bolded those redacted portions in the unredacted brief.

5 The Relators also move to file Exhibit H under seal, which
6 is offered in support of Defendant's motion to dismiss. The parties
7 appear to dispute whether Exhibit H is a discoverable document which
8 could be used in support of Defendant's pending dismissal motion, or
9 at trial should that motion be denied. If this is the dispute, it
10 should be resolved before the judge assigned the responsibility for
11 deciding discovery disputes under L.R. 72-302(c)(1). Since the
12 Relators appear to argue Exhibit H should never have been given to
13 Defendant and is inadmissible work product, it is unclear why this
14 apparent discovery issue has not been resolved, or why this document
15 should be sealed when the Relators seem to argue it should not be used
16 by Defendant. Further, even if all or some portion of Exhibit H is
17 ultimately found admissible for some purpose, it is questionable
18 whether the whole exhibit has to be sealed, as opposed to some part
19 thereof.

20 Moreover, the Relator's move to seal portions of Defendant's
21 Memorandum and Exhibit H under the incorrect "good cause" standard.
22 "[C]ompelling reasons must be shown to seal judicial records attached
23 to a dispositive motion," such as Defendant's pending dismissal
24 motion. Kamakana v. City & County of Honolulu, 447 F.3d 1172, 1179
25 (9th Cir. 2006) (internal quotations omitted). Although the Relators
26 argue the less stringent "good cause" standard has previously been
27 found to justify sealing Exhibit H, "[t]he 'compelling reasons'
28 standard is invoked even [when] the [attachment to the dispositive

1 motion was] previously filed under seal or protective order." Id. at
2 1179 (internal citation omitted).

3 Since it has not been shown under the applicable standard
4 that these documents should be sealed, the motion for a sealing order
5 is denied. Therefore, chambers will remove the documents involved
6 with the sealing request from Defendant's courtesy copies and will
7 have the Clerk of the Court to return those documents to Defendant's
8 counsel. See United States v. Baez-Alcaino, 718 F. Supp. 1503, 1506
9 (M.D. Fla. 1989) (explaining that when a judge decides in camera that
10 a document has not been shown appropriate for sealing, the document
11 should be returned to the submitting party, who may then decide what
12 to do).

13 Lastly, I should not have to spend time deducing what
14 documents were filed in conjunction with a sealing motion and are
15 intended by a party to be reviewed in camera. In the future, the
16 parties shall clearly designate what documents are for in camera
17 review and what documents are courtesy copies. Further, the
18 applicable sealing standard should be discussed.

19 Dated: April 17, 2009

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21 GARLAND E. BURRELL, JR.
22 United States District Judge
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